In *Rex* v. *De Munck* (1918) 1 K.B. 635 Darling J. delivering the judgment of the Court of Criminal Appeal said:—

> "We are of opinion that prostitution is proved if it be shewn that a woman offers her body commonly for lewdness for payment in return".

There was evidence of promiscuity. The point taken by the appellant was that the girl was a virgin and had not ordinary natural sexual intercourse with the men whom she accosted.

A more difficult question is does the word "prostitution" in section 6(1) imply that the woman is a prostitute?

In *Rex* v. *De Munck* (*supra*) the Court said:—

> "The learned Commissioner at the Central Criminal Court laid down the law practically as we are now going to lay it down, and we therefore uphold his decision".

I thing this refers to the first part of the learned Commissioner's direction set out in the report in which he is stated to have directed the Jury that the term "prostitute" was not necessarily confined to a woman who for gain offered her body for natural sexual intercourse, and that if the Jury came to the conclusion that the appellant procured her daughter to offer her body for gain for the gratifiction of the sexual passions of any man by any unnatural and abnormal act of indecency, they would be justified in finding her guilty.

The point was the method of gratifying the passions, not whether that method was used with one man only for the evidence indicated several men, and there is nothing in the judgment of the Court of Criminal Appeal to indicate that they approved of "any man" in the sense of "one man only". The indefinite "any" indicates indiscrimination.

But the Ordinance itself draws a distinction between prostitution and other acts of sexual immorality. Thus Clauses (b) and (e) of section 4(1) both speak of "carnal connection except by way of marriage or for the purpose of prostitution", indicating that prostitution and illicit carnal knowledge are not synonymous.

A person who receives money from a man for boarding and lodging his mistress knowing her to be such may be reprehensible but such person does not commit an offence under section 6(1).

As C. was found by the Jury to have had intercourse with one man only she was not found to be a prostitute.

The conviction of the second appellant depended upon the presumption in section 6(3) and as C. was not a prostitute the presumption does not arise.

The conviction of the second appellant is quashed. The conviction of the first appellant on the third charge is likewise quashed on the ground that the money she received for keeping this girl C. was not earnings of prostitution.

The first appellant might have been charged in respect of C. under section 4(1) (b) but she was not and we do not think it a case for applying section 177 of the Criminal Procedure Code.

It must not be presumed that any kind of statement or evidence will suffice to prove that a woman who has intercourse with a man otherwise than by way of marriage is a kept mistress of that man and not a prostitute.

In deciding that issue, many factors must be borne in mind, such as the evidence proving exclusive use of the woman, the duration of the alliance, the age and antecedents of the woman, the place of abode of the woman and her mode of life. Carnal association with more than one woman at more or less the same time will weaken any evidence that one of them is a mistress rather than a prostitute.

There was evidence to support the conviction on the first and second charges and the convictions and sentences on these two charges are confirmed.

Appeal allowed.

[COMMISSIONER FOR WORKMEN'S COMPENSATION]

E. N. TAYLOR, Esq.

November 2, 1938

SAMMIYAH v. SAKANO & CO.

[SINGAPORE WORKMEN'S COMPENSATION CLAIM No. 111 of 1938]

Workmen's Compensation Ordinance (Cap. 70) Schedule II (h)—operation of loading a ship —Section 15—work undertaken by the principal —F. O. B. contract.

Loading goods into a tongkang to be towed out to a ship in the roads is part of the operation of loading the ship, within the meaning of Clause (h) of the Second Schedule to the Workmen's Compensation Ordinance (Cap. 70).

A workman was engaged by a Serang employed by the respondents.

Held, on the facts, that the Serang was not a contractor with the respondents and *held* further that if he was a contractor the respondents were liable as principals because in all the circumstances physical shipment was within the scope of their business and they had "undertaken" to ship the goods.

Hockley v. *West London Timber and Joinery Co., Ltd.* (VII B.W.C.C. 652) distinguished.

J. T. N. Handy (Extra Assistant Controller of Labour) for the applicant.

Taylour for the respondents.

The facts sufficiently appear from the Judgment.

E. N. TAYLOR, COMMISSIONER FOR WORKMEN'S COMPENSATION, SINGAPORE —The applicant was admittedly injured by a drum which fell while he was in the act of pushing it from the wharf to the respondent's lighter. The accident clearly arose out of and in the

course of the employment but Mr. Taylour, for the respondents raised the preliminary objection that the applicant is not within the scope of the relevant clause of the schedule (h) in the McElwaine Edition, Vol. II p. 563 which reads:—

> "employed in the operation of loading..... or moving goods into.....ships or of fuelling, constructing.....cleaning or painting any ship, tongkang or lighter."

It is admitted that the drum was in transit from the wharf to a ship but the applicant was not concerned with the passage from alongside wharf to alongside ship or with transference from lighter to ship. Once the drum was aboard the lighter the applicant had finished with it. It is contended that the applicant was engaged in the operation of loading the lighter and not in the operation of loading the ship and further that the last part of the clause (which has no direct bearing) shews that in this clause "ship" does not include a lighter.

I was of opinion that the first of these two points fails. If the clause said "employed in loading ships" the meaning would be narrower. But it says "employed in the operation of loading ships." I do not think that each stage must, as Mr. Taylour contends, be treated for the purpose of this Ordinance as a separate operation so that the man who puts the drum into the lighter is not protected though the man who takes it out of the lighter and into the ship is protected. This argument would lead to absurdity and anomaly and is for that reason unsound. The drum was already on the wharf before either of these parties became concerned with it. The job was to load it into a ship in the roads. The transit from the spot where it lay on the wharf to the hold of the ship was, for this purpose, "the operation of loading the ship" and the applicant was employed in that operation.

The second point is more difficult. "Ship" is not defined in this Ordinance. The definition of "registered ship" has no bearing on this case. In plain English "ship" means any sea going vessel of considerable size. Size is relative and "sea" also is relative. But as a matter of plain English I do not think that an ordinary man would include a lighter in the many different ideas suggested by the word "ship"..... As a matter of construction I doubt whether a definition in any other statute can be applied but during the argument we did look at the Merchant Shipping Ordinance, Cap. 150. according to which by S. 3., "ship" includes, not means, every vessel used in navigation and not rowed. This lighter was used in navigation and was towed by a tug or launch—it was therefore a ship within the scope of the Merchant Shipping Ordinance. The draftsman may have had this in mind when he framed clause (h) because it might be doubtful whether a lighter or tongkang was rowed or not when it was docked for repairs. Clause (h) in its present form is an elaboration and a considerable extension of the clause as first enacted in Ordinance No. 9 of 1932. The clauses are arranged mainly according to different industries—but in (h), both in the original and present forms, stevedoring is rolled up with shipbuilding. This is yet another of the "impediments" referred to on the flyleaf. Read as a whole, however, I was satisfied that as a matter of plain English the clause means to include and does include lightering as a stage or incident in the operation of shipping goods and that the applicant is therefore entitled to maintain his application.

The applicant is a stevedore's cooli and the respondents are scrap iron merchants. The Singapore Harbour Board have lately completed the construction of a very considerable extension to their wharf and there were left at various spots on the wharf considerable quantities of iron articles of various sizes and kinds for which the Board's contractors had no further use. The respondents bought these where they lay and sold them to Japan. Mr. Taylour opened that they were sold F.O.B. but the evidence was definite that the respondents were to pay the freight. It may have been "F.O.B." plus freight. At any rate it is clear that the respondents agreed with the sellers that the respondents would take the iron away from where it lay. The respondents own lighters and they selected a steamer bound for Japan and arranged to move the iron from where it lay into their own lighters and thence to the steamer. The case did not develop quite as expected either by Mr. Handy the Extra Asst. Controller of Labour who represented the workman or by Mr. Taylour the Solicitor for the respondents.

The claim was drawn in the alternative—that is it alleged that the workman was employed either by the respondents or by a contractor with them in which latter case the respondents were alleged to be liable under S. 15.

The defence was that the applicant was not employed by the respondents and that if he was employed by a contractor with them they were still not liable because the work was not part of any "work undertaken by the respondents" within the meaning of S. 15 I.

This section is taken from the English Act and is not easy to apply to local circumstances.

I agree with Mr. Taylour that in an ordinary F.O.B. sale where the seller is a merchant or agent not concerned with the physical handling of the goods the seller would not "undertake." within this section though he might have made himself responsible for procuring the shipment of the goods. But I am satisfied on the evidence that this was not such a case. The alleged contractor, Sarayee, is totally illiterate in all languages and his "signature" is merely a mark. He is a head cooli, "mandor" (in Tamil) or "Serang" (in Hindustani) employed by the res-

pondents to procure from time to time casual labourers and for general convenience and in accordance with the common practice they paid the total sum due to the coolies to him and he settled with the individual coolies. It is admitted that they often paid him $1 a day for each cooli but Mr. Taylour strenuously contended that in in this particular case the respondents made a definite contract with Sarayee for him to load the iron into the tongkang at so much a ton. Sarayee maintained that he arranged to provide the coolies on the usual daily terms. It is true that the books of account of the respondents shew that the staff thought that there was such a contract but the only persons who know what passed between Sarayee and the respondents when the arrangements were made are Sarayee and Mr. Sakano who was not available. The fact that Sarayee "signed" the book as acknowledgment that he had received the money does not go to shew that he ever assented to the statement that he had contracted at so much a ton. That point was never put to him at the time. It takes two to contract and there is nothing to show that Sarayee ever did so contract. Mr. Taylour argued that unless there was such a contract the books must have been deliberately falsified and he tried repeatedly to cross-examine on the entirely false assumption that Sarayee and the applicant alleged falsification. I do not think that follows at all. The clerks may have thought it was agreed at so much a ton but that is not evidence that Sarayee did so agree. It is a matter of very great difficulty to estimate the weight of a number of heaps of miscellaneous scrap iron. It is not so hard for an experienced serang to estimate in terms of cooli-days how long it would take to shift the iron. On the other hand Sakano was selling by the ton and it was probably more convenient to him to estimate his costs of shipping the iron by the ton. It is possible that Sakano estimated the weight and arrived at a rough figure and that Sarayee estimated the number of cooli days and arrived at a rough figure and that their rough figures corresponded so they arranged to do the job without ever reaching a true *consensus ad idem*. This is only surmise but where a reasonable explanation of the conflict between two stories is possible it is always to be preferred to the theory of deliberated perjury or falsification of accounts. It is true that Sarayee would tend to sympathise with the injured cooli but Mr. Taylour's theory that he was trying to help him by perjury presupposes that he understood the bearing of this highly technical issue on the right to compensation, which is very far fetched. Sarayee impressed me as an honest witness doing his best to inform the Commissioner correctly. The only fact against him, apart from the book-entry is an alleged conversation with another Serang which was not recounted till long afterwards and is not entitled to much weight. In all the circumstances Sarayee's emphatic statement that he did not contract by the ton remains the only effective evidence on that point. If as, I hold, he made the usual arrangement to provide coolies on daily pay he was not an independent contractor within the section but merely a head cooli engaging other coolies on behalf of the respondents and their agent for paying the men so employed. The surrounding circumstances, especially the type of man which Sarayee is, which is all against the view that he was an independent contractor—the visits of the assistant manager "to see how the work was progressing" and the continuous attendance of their own clerk at the weighing machine—a position from which he could and did observe the lighter—serve to support this view.

I am further of opinion that even if Sarayee was, contrary to my view of the evidence, an independent contractor, the respondents would still be liable because they are the owners of the tongkang and were operating it themselves and they did enter into a contract with the sellers which called for them to move the iron from where it lay and also they frequently did such work themselves employing Sarayee and his gang by the day and all these circumstances distinguish the case from *Hockley v. W. London etc. Co.* VII B.W.C.C. 652 relied on by the respondents. On the contrary I think that the very full judgment of Judge Scully in that case, which was approved by the Court of Appeal, shows that on the facts in this case the workman is entitled to succeed.

As regards amount it is always difficult and often impossible to ascertain the earnings of casual workers who do not keep records. The applicant earned $1 a day but he was not employed on any fixed number of days a month. The estimate of 13½ days work in a month is, think, fair and reasonable. If over a period a man earned less than that he would hardly remain at the call of one Serang, as this workman did.

There was no medical evidence but the workman was present and had visibly lost the whole of one hand. He is therefore entitled to—

60% of 42 x $13.50 or $340.20

Award accordingly.

Stay of execution for seven days.

Money not to be paid out to the applicant till the time for appealing has elapsed and if notice of appeal given not till appeal withdrawn or decided. Respondents to be at liberty to apply for further stay of execution on giving security for payment of award if upheld.

Respondents to pay costs.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.